

26 June 2018

Hon Clare Curran
Minister of Broadcasting, Communications and Digital Media
Parliament Buildings
Wellington

Dear Minister,

Recommendations of the Ministerial Advisory Group on the Public Media Funding Commission

Thank you for the opportunity to work on this important matter.

Our investigation has found that the issues facing journalism and the news media, the level of evidence of risk of public harm and the extent and rate of change across the sector are serious. We recommend that government start to address the issues immediately.

You will see that this report repeats some of the analysis and findings from our April report. This is because this report is likely to be read in isolation from the first. We apologise for the repetition, but feel it is necessary to ensure the evidence we have gathered and the case it presents is not lost through the two reports being separated.

There are some variations in the analysis from the first report. We have taken time to show examples and evidence to support our findings, we have abridged them where possible and we have added detail on the issues facing the journalism and news media that was less relevant in the context of the funding for NZ On Air and RNZ in the 2018/19 financial year, but important in this context.

We have found this work interesting and enlightening.

Yours sincerely

Michael Stiassny
Chair
Ministerial Advisory Group

Role of the Public Media Funding Commission

Recommendations of the Ministerial Advisory Group

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Executive Summary

Background

On 30 April 2018 the Ministerial Advisory Group (the Group) provided recommendations on the allocation of funding for broadcasting for the 2018/19 financial year. This report provides analysis and recommendations relating to the role of a Public Media Funding Commission.

Context

The Group is considering the role of a Commission in the context of a rapidly changing media environment.

Print media and to a lesser degree broadcast media, have declining revenues and have responded by reducing investment in journalism and local content. While attempts have been made to adjust for this with on-line initiatives, the business models for journalism on-line are not yet proven to be sustainable, partly due to the high levels of advertising revenue that is now directed to social media.

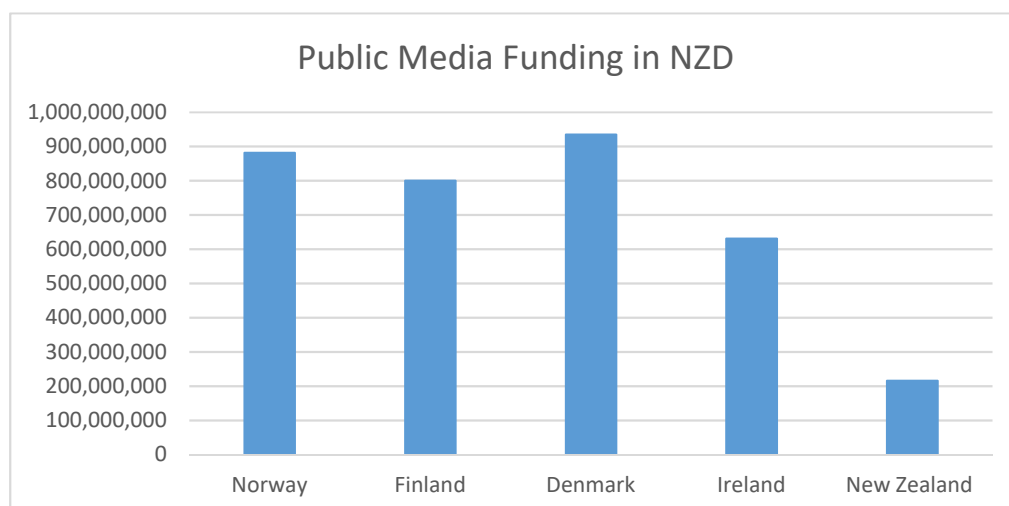
Comparative reduction in local content means our media struggles to support our national identity and adequately serve our varied communities of interest. Declining investment in journalism risks its ability to support our democratic processes.

Media business models are disrupted globally and other countries are similarly grappling with these issues, however other OECD countries commit to higher levels of investment in public media and exercise a wider range of government interventions.

These issues are felt even more so in New Zealand because of our small population, shifting demographics and ethnic composition, and our relatively high cost of distribution. In addition, we are experiencing a deluge of international media content that intensifies the need to increase our efforts to reflect our own identity, revitalise Te Reo and build greater understanding of Māori and Pacific culture.

Analysis

New Zealand's funding of public media falls well short of countries with comparable populations:



This shows how far New Zealand is lagging with the primary intervention we use to support public media, government funding. In addition to higher levels of funding, all the comparator countries make use of other interventions like regulation of local content levels, advertising limits or ownership restrictions on commercial broadcasters.

The Leveson inquiry in the United Kingdom and the Finkelstein report in Australia found media ethics issues to be systemic. As the changes we have detailed increase pressure on the New Zealand media, we risk facing similar issues here. There is no clear, independent voice championing the public interest in the context of New Zealand media.

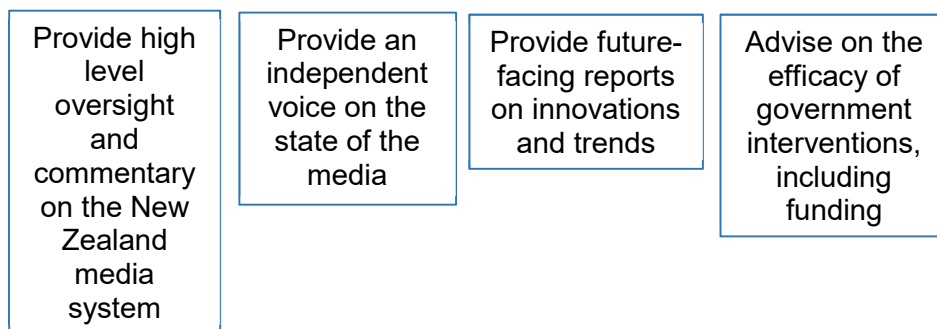
Recommendations

In our view, the evidence of problems across the media system and the potential for public harm that this can cause provides clear justification for the establishment of a statutorily independent oversight body. We recommend that the government act immediately to put a Media Commission in place.

A Media Commission will ensure New Zealand has a specific organisation that is responsible for providing independent oversight of the media system and reporting to Parliament on appropriate public media funding levels and interventions.

We propose that the Commission be tasked with considering public media in the context of the whole of the media system and that it not be restricted to consideration of funding alone. This would empower the Commission to work across the various media organisations in ways that may not directly impact on government or require formal intervention. For example, the Commission could be an 'honest broker' in establishing a more collaborative approach between media organisations while preserving plurality – e.g. in sharing infrastructure.

We recommend that the scope of the Commission's role be defined with the following set of functions:



The intention is that these functions will result in the following outcomes:

- a more effective, co-ordinated and better resourced public media
- a strong, independent public media service that produces high-quality relevant material
- greater public awareness about the importance of public media and its value in contributing to national identity and an informed democracy.

We recommend that the Media Commission be established as an independent statutory body, with its own establishing legislation, hosted by the Ministry for Culture and Heritage, and supported by a secretariat team of two to three staff. It would require an initial budget of approximately \$750,000 - \$1.0 million per annum for member fees, a secretariat, and for resourcing its work programme.

We consider this form to be the most efficient and effective way to deliver the additional system functionality required. However, we believe that it will be important to ensure that the establishing legislation is carefully drafted so that the Commission has the independence to consider, report on, and make recommendations both publicly and to the Minister on matters related to its core functions.

When appointing the Media Commission's members, we recommend consideration should be given to include knowledge, perspectives and skills in tikanga Māori, Pacific custom and practice, commercial expertise and media sector expertise.

We did not find any existing organisations that would be able to appropriately carry out the required functions.

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Introduction

The Advisory Group

The Ministerial Advisory Group (the Group) was established to provide the Minister of Broadcasting, Communications and Digital Media with high-level, independent advice on allocation of funding and the role of a Public Media Funding Commission.

It is tasked with providing advice on options available to address the following objectives:

- a) Support for and enhancement of the role of public media in national identity and an informed democracy
- b) Advice on the provision of sustainable, long-term funding for public media, to safeguard its independence from the government of the day, and protect it from the “benign neglect” of prolonged static funding by publicly advising on required funding levels
- c) Independent analysis and public awareness of the public media sector’s health, needs and opportunities
- d) Support for the provision of quality and independent investigative journalism, in a period when the sustainability of traditional models for delivering quality journalism is increasingly under threat from digital platforms that do not produce original journalism
- e) Support for quality New Zealand content in all genres
- f) Support for plurality in the provision of news and current affairs, given the economic stresses on media businesses that may otherwise reduce plurality.

The Scope of the Report

On 30 April 2018 the Group reported with recommendations on funding allocation for public broadcasting for the 2018/19 financial year.

This report addresses the second deliverable of the Group; recommendations on the role, functions, scope and initial membership of a Public Media Funding Commission.

The Terms of Reference for the Group included the following guidance on the proposed activities of the Commission:

- a) Recommend to Parliament three-year funding levels for RNZ+ (the working title for RNZ expanded to enhance its role as a multi-platform provider) and NZ On Air and recommend the division of additional funding to them; receive multi-year funding bids and business cases from these agencies
- b) Recommend whether and on what basis TVNZ should provide technical and operational support to RNZ+; on the potential for shared services and content development between RNZ+ and the Māori Television Service; and on other practical issues in developing RNZ+
- c) Report to Parliament on the performance of RNZ+ and NZ On Air
- d) Research and report on the health and medium and long-term needs, opportunities and risks of the public media sector
- e) Take into account the role of TVNZ, Māori Television and Te Māngai Pāho

We wish to suggest a slightly broader role for the proposed Commission, recognising that public media is inextricably linked to the overall media environment and its role in sustaining a healthy media environment is likely to continue to change as the environment changes around it.

In our view, the Commission would need to have a comprehensive understanding of the overall media landscape to provide quality oversight and advice on public media. While first and foremost the Commission should provide advice on public media, we suggest that it also be encouraged to consider and comment on wider media issues that impact public interest.

For this reason, we recommend that the organisation be known as the Media Commission. This will allow it to assume an oversight role and a limited public advocacy role as well as providing independent funding advice on public media.

The Process

In preparing this report, the Advisory Group has considered the terms of reference and provided advice on:

- how a potential Media Commission might contribute to the objectives set out in the terms of reference
- what the over-arching role of a Commission should be
- how a Commission would provide clear value to the media system including, but not limited to, public media
- what the strengths and weaknesses (gaps) of the current system are
- and therefore what the functions of a Commission should be
- to whom a Commission should be responsible and how it should account
- what powers, if any, it would need to effectively discharge its functions
- the most appropriate form
- what resources it would need to efficiently discharge its functions
- the initial membership.

Consistent with our report on public media funding, we have approached this by reviewing international media settings, drawing on research detailing media arrangements and government policies in a selection of countries comparable to New Zealand in size or cultural traditions.

Our advice has also been informed by consultation with the wider media sector. We invited stakeholders to meet with us, or submit to us, on four topics:

- the role of the media in national identity and an informed democracy
- arrangements to ensure sustainable, long term funding for public media
- how the government of the day could get independent analysis of the public media sector's health and needs
- the role of government in supporting quality and independent investigative journalism.

A list of the stakeholders we met or received submissions from is detailed in Appendix 1.

We also studied the New Zealand media. Our advice is based on analysis of the New Zealand media 'system', how it functions and where in our view there is risk or a gap that could be detrimental to its strength, particularly in terms of its ability to support national identity and an informed democracy.

We then reference that analysis in recommending the functions and scope of a Media Commission, following which we consider options for its form and membership.

Analysis

Definition of media

The term media in this report refers to ‘media communication’ – the communication of content through mechanisms such as newspapers, magazines, TV, radio, and internet. We have not considered advertising or user generated content as part of the definition of media in this context.

Importantly, public media is critical to national identity. In the New Zealand context, this means our identity as a multi-cultural nation that pivots around our Māori history, our Māori culture today and our central place as a Pacific nation.

What we want for New Zealand media

The report of the Group dated 30 April 2018 detailed the current and desired future state of media in New Zealand. We have not repeated that analysis, but have selected key points to repeat in this report and added perspective from a media ‘system’ view.

New Zealand media organisations are adapting to changing consumer behaviour and expectations. They are providing content on an increasing number of platforms while competing for advertising revenue with companies that aggregate and deliver bulk international content. This environment is continuing to become more difficult and more fragmented.

Advertising revenue that previously enabled commercial media providers to serve a wider audience is being diverted to global online organisations like Google, Amazon and Facebook that do not materially contribute to preservation of national identity.

Broadcasting in New Zealand is competing with new forms of online media offering highly regarded English-language content with every virtue, except that they do not reflect New Zealand life.

News media continues to become less profitable resulting in reduced regional coverage, reduced in-depth journalism, reduced analysis, and more “infotainment” style news content and user generated content.

The Group’s view is that a media system should support innovation, exploit new technology in the interests of the audience and use public resources to maximum effect.

Our media, and specifically public media, needs to be:

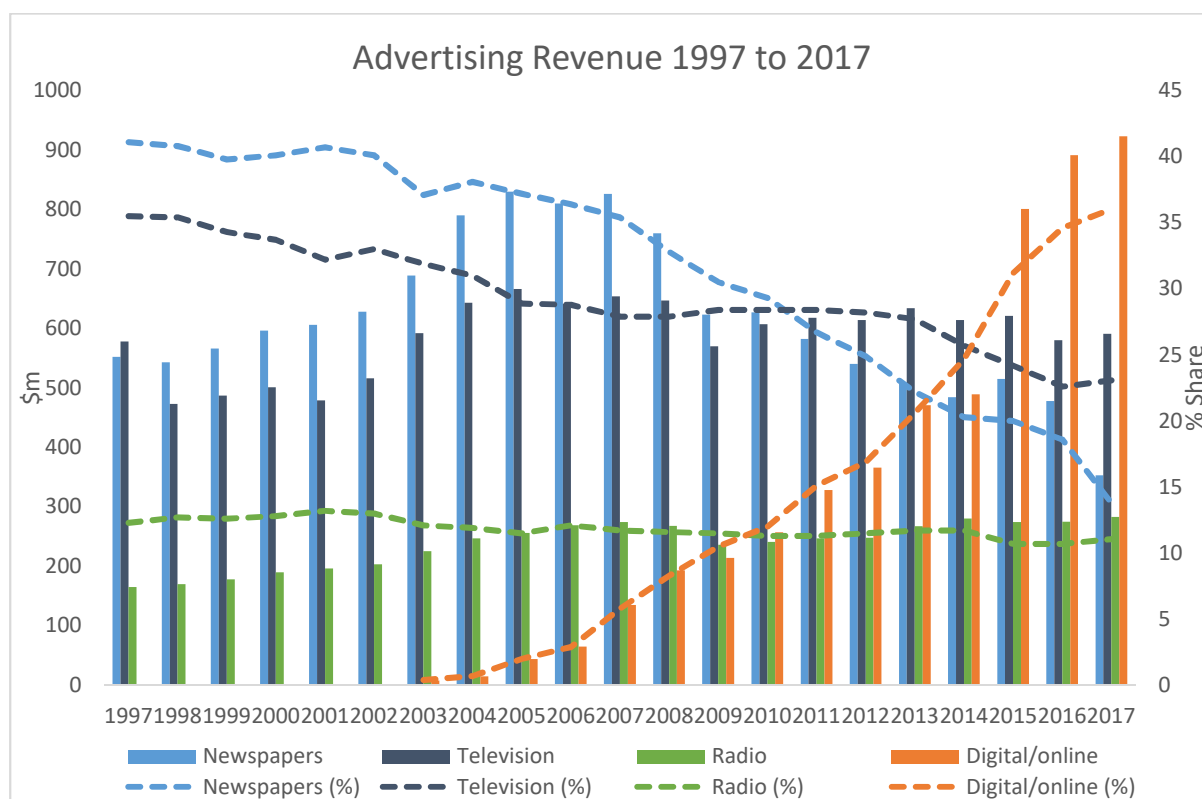
- contributing to national identity
- reflecting a strong Māori and Pacifica perspective
- serving all subsets of the total audience
- promoting national debate
- collaborating with each other while maintaining their own identity
- platform agnostic, with content readily re-versioned and archived to be accessed in various ways
- providing independent, non-partisan and comprehensive news and current affairs - regional, national and international
- placing content in a range of genres on commercial services
- contributing to a skilled production industry
- continuing to perform a lifeline role in emergencies.

The problems we face

Google (including YouTube) and Facebook are now arguably the most powerful global publishers accounting for 25% of global media advertising revenues in 2017¹, but they don't employ journalists or commission local content. This means that the advertising revenue collected by these two organisations is removed from the market that traditionally funded media content including journalism. To date there is no conclusive evidence that the alternative business models being trialled by journalism will succeed.

The following graph shows the change in New Zealand advertising revenue from 1997 to 2017 in both dollars and percent of market share.

Figure 1 Graph of Advertising Revenue Trends



Note: The data for the above was collected from the annual releases of advertising revenue information by the Advertising Standards Authority (ASA). ASA notes there is no standard definition of 'turnover' or standard methodology for collecting this data and that care should be taken when comparing sectors. We recommend this graph be viewed to show trends over time rather than insight into any specific area in any one year.

The graph shows that, as in the global markets, New Zealand advertising revenues are rapidly moving from broadcasting and newspaper media to digital/online media which is dominated by social media. This confirms the issues for media 'health' associated with the affordability of journalism and local content referred to above.

The shift in advertising revenue alongside the fragmentation of audiences due to proliferation of national and international digital media is the fundamental cause of a number of issues we found in our analysis.

¹ www.statista.com/chart/12179/google-and-facebook-share-of-ad-revenue

In Appendix 2 we provide examples and evidence of the problems we have found. These can be summarised as follows:

1. Our media struggles to support our national identity.
2. Our media cannot serve our diverse communities of interest.
3. Our media fails to sufficiently support our democratic process.
4. Global trends show traditional media models are disrupted.

Our recent history also shows that:

5. Public media funding has not kept pace.
6. Our media organisations, including public media, could collaborate better.
7. New Zealand's government interventions in media do not use all available tools.

There are also some New Zealand specific issues to consider:

8. New Zealand has a small population with high costs of media distribution.
9. We have a changing population with rapidly shifting demographics and ethnic composition.
10. We need to revitalise Te Reo and build greater understanding of the role of tikanga in Māori culture.
11. It is cheaper for media to purchase English language content produced internationally, than to make it locally.

Additional issues to consider include those directly affecting the health of the media as it relates to news and current affairs and the public's access to reliable, balanced information:

12. Plurality of media, including New Zealand media, has decreased.
13. Investment in journalism has significantly reduced.

Addressing the Problems

There are three fundamental government interventions that can improve the way media supports national identity and an informed democracy. They are:

- Funding (through government allocation, tax or redistribution)
- Government ownership
- Regulation
 - structural regulation (e.g., media ownership restrictions)
 - content regulation (e.g. local content quota, anti-siphoning, public interest test).

Funding

Our 30 April 2018 report addressed the matter of funding allocation for public broadcasting for the financial year 2018/19. We also commented in that report that we recommend a more sustainable approach and increased multi-year funding for public media content to allow for better long term planning by public media organisations and agencies.

As part of this review, we commissioned a research report from PWC (attached at Appendix 3). We asked them to provide details of broadcasting organisations and the respective arrangements in six countries that could be used as comparators due to population size and/or cultural similarity.

The countries selected were: Norway; Finland; Denmark; Ireland; Canada and Australia.

We note that all the comparator countries, including those with similar populations to New Zealand, appear to have significantly stronger public broadcasting provisions. Excluding Australia and Canada given population variant, the investment in public media in the other four countries are²:

Denmark	\$935m
Norway	\$882m
Finland	\$800m
Ireland	\$631m

New Zealand spends \$216m on public broadcasting, including for local content on commercial channels. Given this is the primary mechanism for supporting public media in New Zealand, it is clearly inadequate.

We believe there is an important ongoing role for independent comment and advice on public media funding levels, funding mechanisms and their effectiveness to help provide government with the evidence and support it needs to adequately fund public media in New Zealand.

The terms of reference noted the issue of “benign neglect” of static funding that can occur when a government turns its attention to other priorities at the expense of the media environment. While an independent voice can raise awareness and make funding decisions more transparent, there is no way to fully insulate public media funding decisions from the Government of the day.

Our view is that the best way to address this issue over the long term is to encourage a public demand for quality information and New Zealand media content. This will place pressure on every future government to ensure a healthy, strong New Zealand media.

Government ownership and regulation

Government ownership and regulation can both be used by government to assist with provision of a healthy, equitable national media that works in the public interest.

The PWC research shows that all the comparator countries had:

- at least one advertisement free television channel
- some restrictions on advertising on commercial broadcasters
- policies to require nationally significant events to be broadcast free-to-air
- requirements relating to the threshold of the amount of locally produced content
- financial support for local production
- funding for public broadcasting through a licence or general taxation.

It also noted that Canada regulates heavily, while the other comparator countries lean more on funding public broadcasters to achieve public service goals.

We did not ask PWC to provide any conclusions or recommendations from its research, but it is clear to the Group that there are interventions being used by our counterpart countries that should at least be considered and discussed in New Zealand.

² Converted to NZD for ease of comparison

We suggest that the Media Commission could develop a work programme that includes some high-level consideration of the relevance to, and potential impact of, some of these interventions on the New Zealand media environment.

[A wider systems view](#)

The 2012 Finkelstein report on the Australian media concluded that there were a number of systemic issues including *“market failure, general public distrust of the media and the consequences of this for the Australian polity, numerous instances of the media doing unjustified harm to people, and the failure of the existing regulatory systems to hold the media to account for these harms”*.

While this report related to the Australian media, (and by inference the United Kingdom media abuses including phone hacking that sparked it) similar issues have been levelled at New Zealand, for example in the 2013 Law Commission report *“The News Media meets the New Media”*³.

The range and breadth of the issues brings us to one of the more interesting opportunities for a potential Media Commission; to take a system leadership approach and deliver consideration from a system perspective⁴.

This would entail the Commission providing oversight and leadership on public media, but firmly in the context of the whole media system. The Commission would act truly in the public interest, viewing public media as an integral part of New Zealand media, not carved off and considered in isolation of commercial media. It would allow the Commission to nimbly react to the rapid changes facing the New Zealand media environment and provide a credible independent voice.

As a system leader the Commission could work across the various media organisations in ways that may not directly impact on government or require formal intervention. For example, the commission could be an ‘honest broker’ in establishing a more collaborative approach between media organisations while preserving plurality – e.g., in sharing infrastructure.

It would also be able to encourage public debate about the value of a healthy, robust media system. This would, over time, be the basis for increased public demand and expectation of quality discussed above.

Taking a system approach to a Media Commission role would fit well with New Zealand’s mechanism for funding local content on commercial broadcast platforms through New Zealand On Air, and keep pace with international thinking on ways to support content for under-served audiences.

³ <http://r128.publications.lawcom.govt.nz/>

⁴ See *Systems approaches to public sector challenges* – OECD 2017, https://www.oecd-ilibrary.org/governance/systems-approaches-to-public-sector-challenges_9789264279865-en

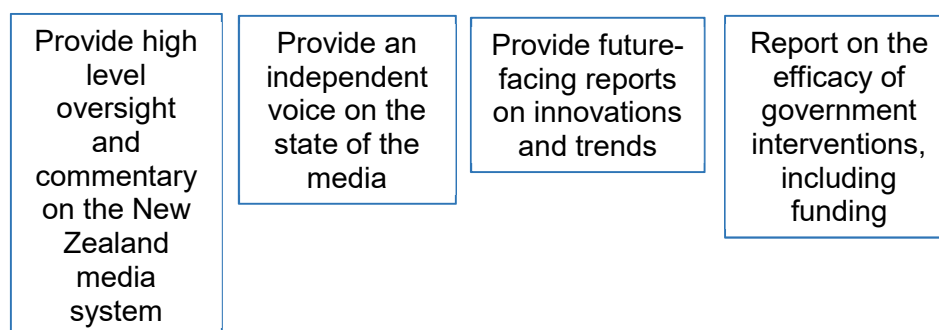
For example, public funding of content on commercial media is being explored in the United Kingdom in response to the perceived threat to journalism and public media from social media and fragmentation⁵. The United Kingdom government trial of public funding of £60m over three years for children’s television content on commercial media also commences this year⁶.

Conclusion

In our view, the evidence of problems across the media system, and the potential public harm that this can cause, provides clear justification for the establishment of an independent oversight body.

Scope and Functions of a Media Commission

Having analysed the current system and identified risk areas and gaps, we believe that the scope of the Commission’s role should be defined by following set of functions:



The intention is that these functions will result in the following outcomes:

- a more effective, co-ordinated and better resourced public media
- a strong, independent public media service that produces high-quality relevant material
- greater public awareness about the importance of public media and its value in contributing to national identity and an informed democracy.

System oversight and commentary

There are many voices commenting on the state of the media, both nationally and internationally. However, there are few to none with a genuine mandate and budget enabling analysis and consideration across the whole media landscape.

The media system is complex and constantly changing. A change in one small area can result in consequences across the whole system. The potential for a Media Commission to provide oversight and commentary as to the health and state of the system, including funding of public media in that context, is important to the health of our national identity and the strength of our democratic process.

This function is critical and to provide it effectively will necessitate a strong, highly functioning expert group of people that can stay up to date across all facets of media and call attention to its failings with authority.

Independent voice on state of media

⁵ <http://www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-11-Public-Funding-Private-Media.pdf> and

⁶ <http://www.bbc.com/news/entertainment-arts-42513685>

It is important that the potential Media Commission is independent of commercial and political influence both in reality and perception, and can advocate for the system without prejudice or agenda beyond that of public interest.

It needs to be above reproach to be effective in this area. This is where the selection of members will be critical to its success. Any perception of conflict of interest or inference of bias will undermine its ability to carry out these functions. The level of independence of this group will directly affect its ability to make its voice heard.

Understanding the impact of local content and a healthy media environment may help restore the public's interest and increase expectations regarding media and within it, public media. This in turn can promote public awareness, interest and debate on the importance of public media to national identity and an informed democracy. The power of reigniting the public interest can be seen in the United Kingdom where the high court has recently granted approval for a group representing public interest to seek a judicial review of the government decision to cancel the second stage of the Leveson inquiry⁷.

The most enduring way to guard against public media being a victim of 'other priorities' is by encouraging public demand for it.

Future facing and alert to innovations and trends

The challenges we have detailed across the media are not static, the system will continue to evolve and change, bringing new and different challenges.

This function is not about predicting the future or the rate of change, but is about understanding enough about developing trends to ensure that we don't create solutions for today's problem and find that tomorrow we have to start again.

Keeping across what is happening globally, what technologies are emerging and how they might impact the system will not only provide an early warning system for any new approaching issues and threats, but also may help identify techniques and tools to help the system become more robust.

Advise on efficacy of government interventions

As we described in our analysis, there are a number of tools available to government to improve the performance of the media, including the provision of funding. It will be helpful for the Media Commission to be able to independently assess at a high-level, the efficacy of the interventions being used, and examine and advise on the interventions that aren't being used.

Form of a Media Commission

The next step is to consider what an appropriate form for a media oversight body or Media Commission should be.

There are many options for government organisations and they have varying degrees of independence. The following table from the State Services Commission shows the variation in independence between the three most common types of crown entity:

⁷ <https://www.theguardian.com/media/2018/may/21/leveson-2-government-taken-court-over-cancelled-inquiry>

	Crown agent	Autonomous Crown entity	Independent Crown entity
Power to appoint board members	Minister	Minister	Governor-General, on recommendation of Minister
Power to remove board members	Minister's discretion	Minister, for justifiable reason	Governor-General, for just cause, on advice of Minister. Attorney-General consulted
Power to direct on government policy	Must "give effect to" policy that relates to the entity's functions and objectives if directed by Minister	Must "have regard to" policy that relates to the entity's functions and objectives if directed by Minister	No power to direct, unless specifically provided for in another Act ⁷
Power to set direction and annual expectations	Minister	Minister	Minister
Whole of Government approach	Must "give effect to" if directed by Ministers of Finance and State Services	Must "give effect to" if directed by Ministers of Finance and State Services	Must "give effect to" if directed by Ministers of Finance and State Services

Form Options

We have considered four options ranging from the highest perceived form of independence (Officer of Parliament) to the least noting that independence can be enshrined in legislation in any form. We have not considered every available form individually but have included assessment of the crown entity form with the highest level of independence in the table above (Independent Crown Entity):

Officer of Parliament

An Officer of Parliament is a form that is independent of the government of the day, usually due to a function that requires it to hold the executive arm of government to account. An Officer of Parliament reports to Parliament through the Speaker. There are currently only three officers of Parliament; the Ombudsman, the Auditor General and the Commissioner for the Environment.

While there is no statutory definition for this form of Government institution, in 1989 the Finance and Expenditure Select Committee created a set of guidelines to be used when considering an Officer of Parliament:

- An Officer of Parliament must only be created to provide a check on the arbitrary use of power by the executive.
- An Officer of Parliament must only discharge functions that the House itself, if it so wished, might carry out.
- An Officer of Parliament should be created only rarely.
- The House should, from time to time, review the appropriateness of each Officer of Parliament's status as an Officer of Parliament.
- Each Officer of Parliament should be created in separate legislation principally devoted to that position.

In addition, while it is not a formal requirement, guidance on this form notes that it is “*accepted that the House as a whole should come to a view on the creation of Officers of Parliament and that it is desirable for it to achieve consensus on this*”⁸.

We acknowledge that the Parliamentary Commission for the Environment (PCE) does not conform entirely to these guidelines, however the guidelines were put in place after its establishment (the PCE was established in 1986).

The PCE is probably the closest comparison we can consider. As an independent Officer of Parliament, the Commissioner has broad powers to investigate environmental concerns and is wholly independent of the government of the day. All of the Commissioner's work is directed towards a single output, independent reports and advice on environmental issues, and a mission to maintain or improve the quality of the New Zealand environment.

Rather than reporting to a Minister, the PCE reports to Parliament as a whole through the Speaker of the House and the Officers of Parliament Committee. This makes the PCE independent of the government of the day. The PCE has no decision making role. Decisions to change environmental law, policy and institutional arrangements are the responsibility of Parliament, central government, and local government

The PCE has an annual budget of \$3.3m, with just over two thirds of that budget funding personnel. The office employs 19 staff.

There are two issues that concern us about this form. The first is that an Officer of Parliament does not have a board, but is a single Officer with support arrangements. We believe it is important that the Commission represent more than one person's view – importantly there should be some attempt to include a mix of gender and cultural perspectives.

Secondly, in our view, a media oversight body doesn't comply with the Finance and Expenditure Committee's guidelines for establishing an entity of this form, so could fail in getting consensus across the House to set it up.

An estimate of a budget for this type of form would approximately \$1.5m - \$2m. This is based on an office with 4-6 staff and the Officer of Parliament, plus a small budget for commissioning research and reporting.

Independent Crown Entity

An Independent Crown Entity (ICE) is a form that does not need to have regard to or give effect to government policy. There are a number of Independent Crown Entities, examples include Broadcasting Standards Authority, Commerce Commission, Privacy Commissioner, and the Law Commission.

⁸ <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-7-officers-of-parliament-and-other-officers-and-bodies-associated-with-parliament/> by David McGee

State Services Commission guidelines on machinery of government describe an independent Crown entity as “*appropriate in cases where public confidence in decision making is paramount, such that it demands a level of independence from Ministers for decision making purposes that can be provided only where the decision maker is:*

- *NEITHER subject to influence or easy removal by Ministers*
- *NOR required to give effect or have regard to the policies of the government of the day.”*

While an ICE has statutory independence, it is still funded through a government department and reports to a portfolio Minister.

The guidelines also describe it as typically suitable for quasi-judicial and adjudicative functions, as well as certain investigative roles and regulatory activities.

The advantage of an ICE is that it has a higher level of independence than other crown entity forms, with the exception of an Officer of Parliament. However, it may not be an ideal fit given the intention for this form to be used for mostly operational functions that tend to be regulatory or quasi-judicial.

It is also not the most cost effective option. Similar to the Officer of Parliament, a likely budget for an office and staff of 4-6 plus a board of around 5 would be approximately \$1.5m - \$2m.

A statutorily Independent Body within existing department or Crown entity

A Media Commission in this form would sit within a department, probably the Ministry for Culture and Heritage, but would have its own establishing legislation. This option is similar to the current form of the following statutory bodies:

- The Archives Council is an unincorporated body established under the Public Records Act 2005 to provide independent advice to the Minister responsible for Archives New Zealand on recordkeeping and archives matters including those for which tikanga Māori is relevant. It also has a more general mandate to advise the Minister on a broad range of archives and recordkeeping matters, which means it can provide advice on its own initiative.

The Council has no more than seven members appointed by the Minister of Internal Affairs. In appointing members, the Minister must consult with the Minister of Māori Affairs and the Chief Archivist to ensure that members have special knowledge and qualifications that are relevant to the functions of the Archives Council and in the case of at least two members have tikanga Māori knowledge. The Department of Internal Affairs provides administrative and secretariat support to the Council.

The Council meets four times each year. It reports to the Minister each year on its functions during the preceding year. The Minister must then present the report to the House.

- The Remuneration Authority is the independent body set up by Parliament to determine the remuneration of key office holders such as Judges, Members of Parliament, local government representatives, and some individual office holders and board members of independent statutory bodies. The functions of the Authority are set out in more detail in the Remuneration Authority Act 1977.

The Authority has three members appointed by the Governor-General by Order in Council. The Act provides for a chief executive for the Authority to be appointed by the Ministry for Business, Innovation and Employment and as many employees of the Ministry as may be necessary to enable the Authority to exercise its functions and powers.

Meetings are held at times the Authority appoints. The Authority reports to the Minister each year on its functions during the preceding year. A copy of the report must be presented to the House.

This form would have the advantage of being able to leverage the policy work being done by the Ministry, and could be set up with its own secretariat to maintain its independence from day to day Ministry operations. A disadvantage is that, given its location within the Ministry, it could be perceived as lacking an independent voice.

Our estimate is that this would be a lower cost option than the previous two organisational forms we considered, as it would be able to leverage the operational costs of the Ministry it resides in. We believe that a Commission in this form could be achieved within a budget of between \$750k to \$1.0 million per annum. To test this we estimated the fees for a group of members working 60 days over the course of a year, plus an operating budget, using the Cabinet Fees Framework.

Our view is that this is the most practical form for the Media Commission. Clear establishing legislation will ensure that the Commission is sufficiently independent of government to be able to speak freely, honestly and publicly. This form would enable the Commission to be convened from time to time rather than as a permanent office, and would have an appropriate budget allowing it to employ a secretariat and contract work to fulfil its work programme obligations.

Informal Advisory Group

This option would involve establishing the entity as an informal advisory group with its own budget to pay for secretariat support and the research and resources needed to carry out its work programme. It would not have statutory independence.

Examples of this form include the Forestry Advisory Group or the Digital Economy and Digital Inclusion Advisory Group (DEDI). Neither of these are set up in legislation.

The primary purpose of these groups is to provide advice to the Minister, where the Minister deems it important to have access to independent expert advice.

There is no reason that this could not be set up as a public facing entity rather than advising the Minister directly. However it could suffer from lack of independence and would serve at the whim of the Minister with little to no restraint on being directed or even disestablished without process.

We estimate that an advisory group with sufficient resource to complete an annual work programme would require a similar budget to a statutory group at around \$750k per annum.

Summary of form options

Figure 2 Summary table of form options

The below table summarises the four form option assessed against four criteria: independent form, legislated independence, supports a multi-skilled board, and cost estimate.

	Officer of Parliament	Independent Crown Entity	Statutorily Independent Body	Informal Advisory Group, or Panel
Independent Form	√	√	x	x
Legislated independence	√	√	√	x
Supports multi-skilled board	x	√	√	√
Cost estimate	\$1.5m - \$2m	\$1.5m- \$2 m	\$750k - \$1m	\$750k

Alternatives to a Media Commission

We have considered whether the functions and gaps identified could be addressed by an existing entity.

Broadcasting Standards Authority

The Broadcasting Standards Authority (BSA) is an Independent Crown Entity that oversees the Broadcasting Standards regime in New Zealand. It does this by setting standards, working with broadcasters to agree codes of practice and then deciding on complaints where those standards and codes are perceived to be breached.

The BSA has a small board of four people who provide governance of the BSA and also consider and decide complaints.

The current function of the BSA is operational. It provides an appeal process for complaints that have not been able to be resolved by the broadcaster direct with the complainant with the exception of complaints regarding privacy and election advertising for which the BSA considers the initial complaint.

The board and staff of the BSA are highly skilled and tightly focussed on a specific task - administering the standards system for television broadcasters. The functions that have been identified as requiring attention to address the systemic gaps are strategic and encompassing of the whole media system including television, newspapers, radio and on-line media.

It is our opinion that the BSA would not be well positioned to carry out the functions required to address the issues being faced by New Zealand Media, given its strong primary focus on standards and complaints, which will still be required separate from the functions identified here.

Productivity Commission

The Productivity Commission is an Independent Crown Entity that provides advice to Government to improve productivity in order to support the wellbeing of New Zealanders.

To this end it carries out inquiries referred to it by the Government; undertakes productivity-related research; and promotes understanding of productivity issues.

While the Productivity Commission could in theory develop a programme of work to address media issues there are a number of issues connected with it addressing media issues:

1. It does not typically do ongoing work – its enquiries are time bound and concluded with a series of one-off recommendations.
2. It focusses on productivity whereas the issues facing media primarily impact democracy and national identity.
3. The government guides its work programme, whereas it would be important that a media oversight group were free to identify the most important issues to address in context of the public interest. This might not always coincide with the priorities of the government of the day.

NZ On Air

NZ On Air (Broadcasting Commission) is an Autonomous Crown Entity set up to provide independent funding of media programming to reflect and develop New Zealand culture and to ensure a range of programming is available to New Zealanders.

NZ On Air has a board of six members appointed by the Minister of Broadcasting, Communications and Digital Media, who govern the organisation and consider funding allocation recommendations in three broad areas – factual, scripted and music as well as administering closed funding for existing platforms. NZ On Air has recently transitioned to a single strategy and platform neutral fund called the NZ Media Fund.

Similar to the BSA, NZ On Air board and staff are highly skilled and tightly focussed on a specific task – in this case content funding. Its work is specialised. Further, NZ On Air would be conflicted with some of the work expected of the Commission, particularly around funding and intervention efficacy advice.

We do not believe that the role of NZ On Air is compatible with those required to provide leadership and comment on high-level media issues in New Zealand.

Potential Work Programme

While it is outside the scope of the terms of reference to recommend a work programme for the Media Commission, we believe it will assist in understanding the potential value of the Commission if we detail some examples of what a work programme might look like. Some areas we think could have priority in the initial years include:

- Appropriate target levels of funding for an effective public media system and a realistic timeframe to achieve this.
- How to improve outcomes for Māori and Pacific Peoples.
- Ways to improve outcomes for under-served audiences, including regions and young people.

Summary and conclusion

As noted in the introduction we intend to provide advice on a number of aspects relating to a proposed Media Commission. Taking account of the issues we have identified and the analysis we have undertaken our conclusions follow.

How a potential Media Commission might contribute to the objectives set out in the terms of reference

We believe that a Media Commission could provide considerable value to the New Zealand media system by providing media system leadership, oversight and commentary. Furthermore we believe that the establishment of a Media Commission is necessary to analyse and call attention to the issues being faced by the New Zealand public in the face of the global, national and regional changes to the media environment.

What the over-arching role of a Media Commission should be

Our view is that the over-arching role of the Media Commission should be to:

1. provide independent advice and commentary on the state of the New Zealand media system
2. provide advice to Parliament on appropriate public media funding levels and interventions
3. review and comment publicly on the international trends and developments that affect the New Zealand media system
4. undertake, publish and promote public discussion on regular horizon scans to encourage a more forward looking approach to addressing media issues.

How a Media Commission would provide clear value to the media system including, but not limited to, public media

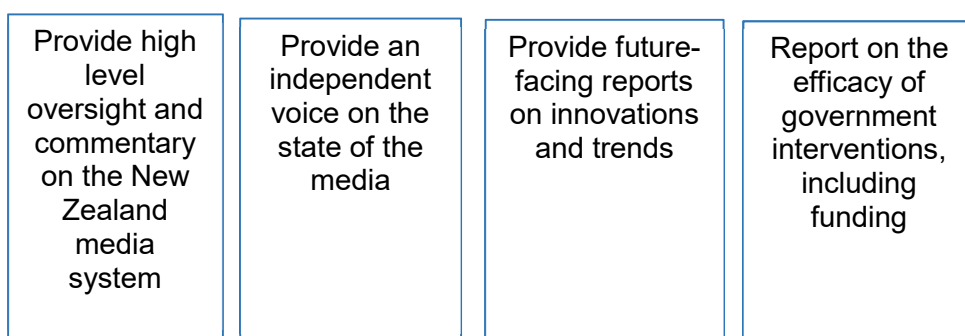
The Media Commission's reports and recommendations on the media system should be made public.

We recommend that the Media Commission develop an annual work-programme, and agree it with the relevant portfolio Minister. There could be an option to invite public engagement on the potential work programme each year to aid with public interest in the Media Commission and the media system. To ensure transparency, we recommend that there be a requirement to publish the annual work programme.

The work programme and subsequent reporting would provide a pathway for evidence of value, particularly if there were public and media stakeholder input into the development of it.

What the strengths and weaknesses (gaps) of the current system are and therefore what the functions of a Media Commission should be

The analysis of the current system leads us to believe that the set of functions appropriate for the Media Commission are:



To whom a Media Commission should be responsible and how it should account

We believe that the Media Commission should report first and foremost to the public, and also to the relevant portfolio Minister and Vote Minister. The legislation could establish an obligation on the Minister to present Commission reports, as soon as practicable, to the House of Representatives.

What powers, if any, it would need to effectively discharge its functions

The Commission would need to be independent of government and be able to speak freely, honestly and publicly without fear of recrimination by political figures. Its establishing legislation would need to be carefully crafted to deliver this. It may also require powers to compel bodies to provide it with the information it needs to effectively analyse media trends, similar to Commissions of Inquiry under the Commissions of Inquiry Act 1908.

The form of the Media Commission

Our view is that the Media Commission should be established as an independent statutory body with its own establishing legislation, hosted by the Ministry for Culture and Heritage. We believe this is the best option of the four we reviewed. We were unable to identify an existing entity that would be able to assume responsibility for the required functions.

We recommend that the Media Commission be supported by a secretariat team of two to three staff employed by the Ministry for Culture and Heritage. This option is likely to be the most cost effective of those we considered.

Subject to funding, the Media Commission could be implemented, at least in part, immediately as an interim arrangement while the legislation is drafted and put in place.

Membership

We recommend the Media Commission consist of a minimum of five members and a maximum of seven members appointed by the relevant portfolio Minister, in consultation with the media sector. One of these members is to be appointed the chairperson.

We recommend that consideration be given to the following knowledge, perspectives and skill priorities:

- tikanga Māori
- Pacific custom and practice
- commercial expertise
- media sector expertise.

We recommend members be appointed for a term of up to 3 years, with ability to reappoint. We recommend staggering reappointment so that there is some continuity of membership.

Remuneration

We note that remuneration for Commission members will be set under the Cabinet fees framework for members of statutory bodies. Travel and other allowances are paid in accordance with the Fees and Travel Allowances Act 1951.

What resources it would need to efficiently discharge its functions

Our best estimate is that a statutorily independent body of up to seven people with a secretariat team of two to three staff hosted by the Ministry of Culture and Heritage and a budget to undertake research or analysis would cost between \$750k and \$1m per annum.

Recommendations

In summary our recommendations are that:

1. a Commission should be established and named the Media Commission;
2. the role of the Media Commission should be to provide advice on public media, public media funding and wider media issues that impact public interest;
3. the functions of the Media Commission should be to:
 - a. Provide high level oversight and commentary on the New Zealand media system
 - b. Provide an independent voice on the state of the media
 - c. Provide future facing reports on innovations and trends
 - d. Advise on efficacy of government interventions, including funding;
4. the Media Commission be established as an independent statutory body, with its own establishing legislation, hosted by the Ministry for Culture and Heritage, and supported by a secretariat team of two to three staff;
5. the Media Commission should have a minimum of five members and a maximum of seven members and that one of these members be the chairperson;
6. when appointing the Media Commission's members, consideration should be given to include knowledge, perspectives and skill priorities in tikanga Māori, Pacific custom and practice, commercial expertise, media sector expertise;
7. the Media Commission's initial budget should be costed properly, but that it is likely to be approximately \$750k - \$1.0 million per annum including board fees, secretariat and resource for research and reports.

Appendix 1 – Stakeholder consultation

In consulting stakeholders, the Advisory Group met the following organisations and individuals:

- NZME
 - Stuff*
 - TVNZ
 - MediaWorks*
 - Māori Television
 - Te Māngai Pāho
 - The National Pacific Radio Trust*
 - The Screen Production and Development Association (SPADA)*
 - Ngā Aho Whaakari, the Māori Screen Guild
 - Independent producer John Barnett
- * also provided written submissions.

In addition, the Advisory Group received written submission from the following:

- Peter Thompson, Victoria University
- Women in Film and Television
- Radio Broadcasters Association
- Pacific Media Network
- New Zealand Children Screen Trust
- NZ On Air
- Better Public Media Trust

Appendix 2 – Examples and Evidence of Issues

Some of these we detailed in our report of April 2017, but they are important and worth repeating. We have summarised wherever possible and we have taken time to provide examples and evidence to support our findings:

1. Our media struggles to support our national identity

Our small population is ethnically diverse with a range of interests and informational needs. New Zealand’s rich cultural diversity is not always reflected across our media.

Māori Television and Te Māngai Pāho provide content to strategically support Te Reo Māori and the preservation of Māori culture associated with that. However, it is vital to New Zealand national identity that historical tikanga and traditions, as well as Māori cultural perspectives of today, are well represented through everyday media.

Our unique position in the Pacific needs to be reflected across our media. New Zealand, as home to people from a broad range of Pacific Island cultures, has an opportunity and an obligation to contribute to the keeping of Pacific culture, perspectives, history and traditions.

Preservation and support of our national identity is a critical role for our public media. We cannot afford to lose this as it is something we cannot regain once lost.

A 2016 NZ On Air report on local television content shows an increase in local content hours and a steady trend in the percentage of local content on the schedule, however there has been a decrease in local content in prime time and a significant drop in local content as a percentage of the prime time schedule.

Figure 3: NZ On Air 2016 Local Content by Genre

Genre	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
News/Current Affairs	4,055	4,042	3,978	3,807	3,882	3,948	3,305	3,750	3,660	2,961
General Factual	3,029	3,593	3,257	3,124	2,799	2,053	2,180	1,742	1,708	1,919
Sports	1,825	1,501	1,568	1,425	1,934	1,774	1,665	1,613	1,754	1,681
Children’s	1,155	1,232	1,034	973	872	990	885	1,067	1,047	856
Documentaries	1,154	928	943	1,055	889	764	694	742	691	622
Entertainment	813	569	889	863	752	823	1,277	1,574	1,809	1,621
Drama/Comedy	722	646	559	615	572	551	518	601	712	817
Māori	374	326	309	291	351	317	358	333	223	308
Local Content Broadcast time	13,126	12,836	12,537	12,154	12,051	11,219	10,881	11,418	11,600	10,784
Local Content % of Schedule	31%	33%	33%	32%	32%	31%	32%	34%	34%	32%

Local Content in Prime time	2,982	3,156	3,117	3,102	3,055	3,240	3,071	3,436	3,701	3,726
Percentage of Prime time schedule	31%	36%	36%	35%	35%	37%	35%	40%	42%	43%

The stable contributions of New Zealand content on television is positive. The decline in local content as a percent of prime-time gives an indication of the effect of audience fragmentation. As the number of channels and online platforms increase, unless there is a proportionate increase in hours of local content, viewing numbers for each piece of local content will drop.

2. Our media cannot serve our diverse communities of interest

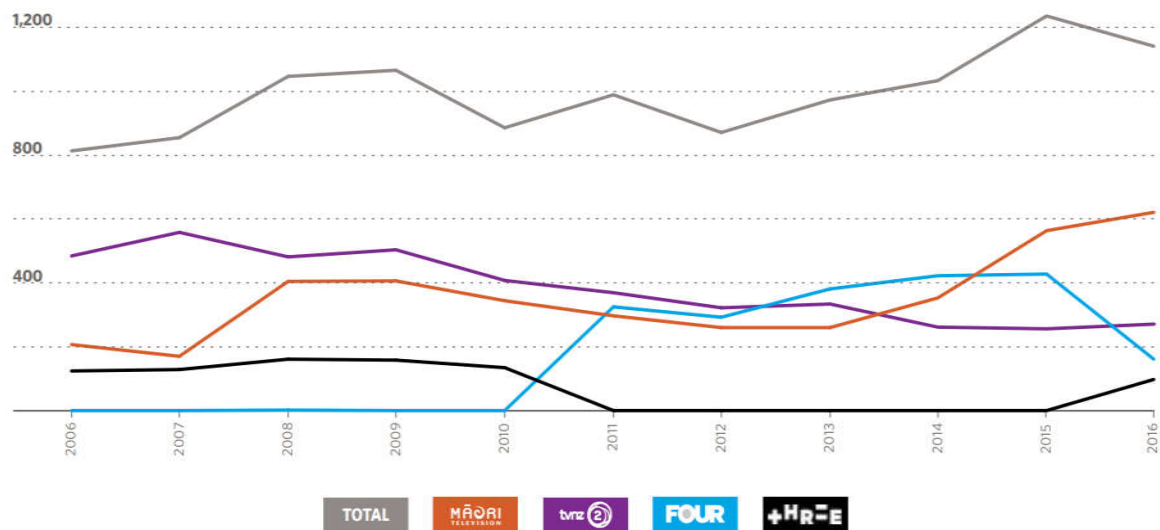
Children, young people and minority audiences are under-served in the New Zealand system. There are also limits to the services provided for specialised audiences, such as sight or hearing impaired. We believe this is a consequence of static local content funding and the commercial orientation of New Zealand television.

We have considered the example of children’s television content. The following figure shows that while the overall total hours of children’s television has increased, it has decreased on TV2, Three and Four, with a significant increase on Māori Television stabilising the total figure; however Māori television has lower viewer numbers.

Figure 4 - Children and Young People’s Television Programming by Channel

CHILDREN’S AND YOUNG PEOPLE’S PROGRAMMING

Fig 27. Chart of Children’s Local Content by Channel



Source: NZ On Air

This supports our assessment that the commercial orientation of New Zealand television may be affecting its ability to provide programming for underserved audiences, given Maori Television is less commercialised.

We acknowledge Māori Television’s achievements in increasing its children and young person’s programming.

3. Our media fails to sufficiently support our democratic process

In a country the size of New Zealand, well-informed participation in our democratic system relies on a credible, well-supported public media. The ability of the population to understand and disseminate information about our elected officials and their respective positions and policies is critical to the fair and equitable implementation of the democratic political process. There has been considerable comment revealing perceptions that the overall quality of information available has declined in recent times. This is, however, difficult to measure.

4. Global trends show traditional media models are disrupted

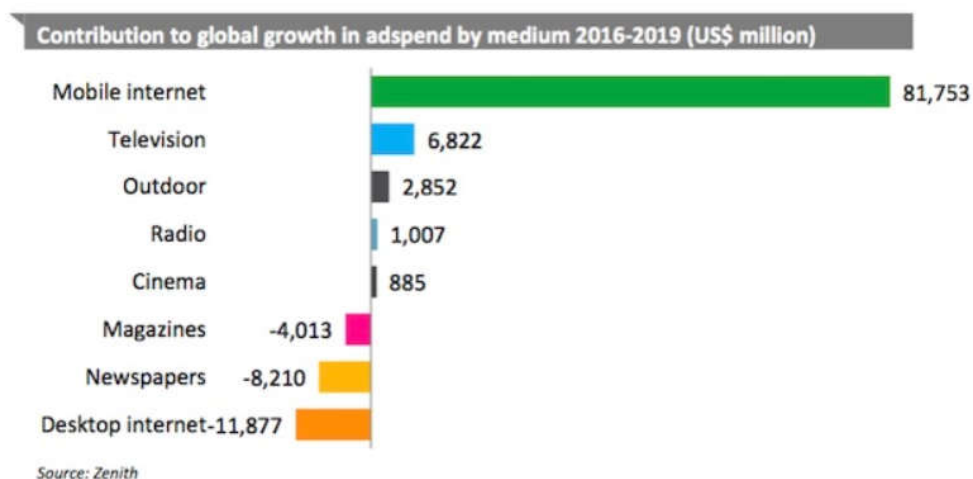
New Zealand public media funding has remained targeted at forms of media that are no longer ubiquitously accessed by our population.

Media organisations globally are facing unprecedented challenges as international technology giants such as Google, Facebook, Netflix and Amazon dominate audiences and advertising revenue. This pushes entities into highly commercial "clickbait" and "lowest common denominator" behaviour to keep eyes on screens.

This has also reduced the impact of the funding provided for local content and public media as advertising revenues move to online publishers. Public broadcasters have attempted to respond within the boundaries of their legislation and funding, but need better support to address this challenge.

These challenges are predicted to continue to increase:

Figure 5 - Zenith predictions on global contribution to advertising revenues in the US



Our recent history also shows that:

5. Public media funding has not kept pace

A fully-funded public media service such as RNZ is insulated from the key problem confronting commercial media: maintaining advertising revenue. However, public funding has remained static for extended periods, which limits the ability to grow and extend audience coverage.

At the same time, public media, like its commercial counterparts, has to cope with the fast pace of technological change and disruption and changing audience expectations. It faces similar cost pressures to commercial providers, but with the added responsibility of fulfilling a public remit and considering the needs of specialised as well as general audiences.

Similarly, New Zealand funding agencies have been faced with attempting to continue to support New Zealand content over an increasing number of platforms with little to no funding increases.

NZ On Air advise that in real terms, the static funding has taken \$20 million from its local content budget when applying inflation adjustment.

6. Our media organisations, including public media, could collaborate better

The value of greater collaboration between public media organisations, and the difficulty of achieving it in practice were themes that came up repeatedly in our discussions with stakeholders. These difficulties arise from concerns about brand identity, and the relative power or incompatible mandates of potential partners.

In the commercial environment, the pressures placed on business models are forcing media organisations to join forces or implement take-over tactics. Public media need to consider joining forces as much as possible to stay relevant.

The issue of cost effectiveness and efficient training and utilisation of talent has become more critical in the context of continued fragmentation and the financial pressure it puts on our public media budget.

7. New Zealand's government interventions in media do not use all available tools

There are typically four types of government intervention to achieve public media objectives:

- provision of funding
- subsidy or relief
- ownership of media entities
- various forms of regulation including content quotas, licence conditions, a requirement to contribute a share of profits to content production and restrictions on ownership of media assets.

New Zealand policy has focussed on the first two with little use of regulation. While it is outside the scope of our terms of reference to recommend widespread change to the Government's interventions in public media, it may well be beneficial to consider this in the coming years.

There are also some New Zealand specific issues to consider:

8. New Zealand has a small population with high costs of media distribution

The population spread throughout New Zealand means that the infrastructure costs associated with both broadcasting and online media are restrictive. People in low population areas use different methods to view local content and access news and current affairs, depending on where they are and what technologies have been used to extend media content to them.

To reach all New Zealanders our public media content needs to be available on every possible platform and this can only be achieved through adequate funding and incentivising innovative approaches to content creation and distribution.

9. We have a changing population with rapidly shifting demographics and ethnic composition

Our public media organisations can only respond to changing demographics when they are able to fund the research necessary to fully understand our population and the extent

of the cultures it comprises.

10. A need to revitalise Te Reo and build greater understanding of the role of tikanga in Māori culture

The revitalisation of Te Reo and understanding of the role of tikanga cannot be left entirely to our Māori media organisations. It needs to be present throughout our media, both public and commercial.

11. It is cheaper for media to purchase English language content produced internationally, than to make it locally

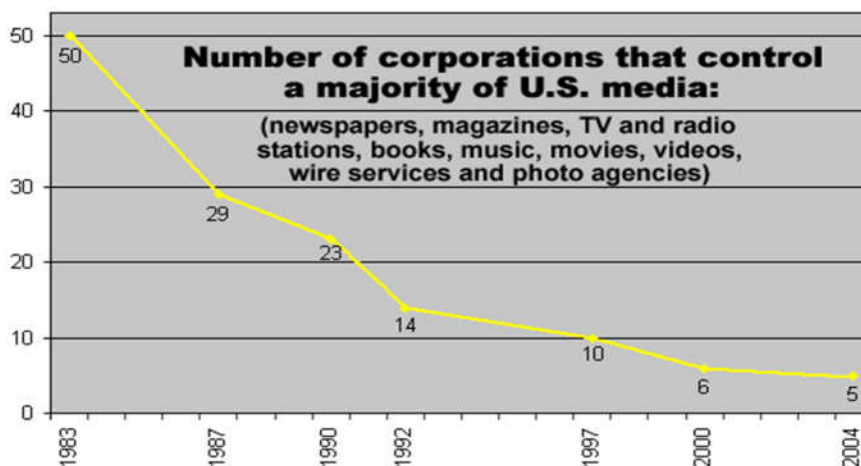
Without public support we are likely to see a dramatic reduction in the representation of our people and culture reflected in our media. A New Zealand without RNZ and NZ On Air would have a drastic impact on our national identity and the health of our democracy. It is essential that these two public media entities are funded to a degree that keeps them functioning healthily in the current media environment and into the future.

Additional issues to consider include those which are directly affecting the health of the media as it relates to news and current affairs and the public's access to reliable, balanced information:

12. Plurality of media, including New Zealand media, has decreased

The number of 'voices' in media ownership and the perspectives they represent has long been agreed by media academics to be a key indicator of the health of media in relation to supporting a democracy⁹. The concept is that the fewer perspectives there are, the more threat there is to the quality and quantity of public interest journalism and importantly, the less rigour in holding power to account. We note that one of the main goals of the EU media policies detailed in the PWC report, is to maintain media pluralism.

Figure 6- US media ownership 1983 to 2004



Source: Media Reform Information Centre

Print media in New Zealand has changed from 10 total owners in 2008 to 4 in 2017¹⁰.

⁹ London School of Economics, Media Policy Project

¹⁰ Bill Rosenberg – News Media Ownership in NZ 2008 and JMAD – News Media Ownership in NZ 2017

13. Reduced investment in journalism

The drive to retain profit in commercial media puts pressure on media organisations' operating costs including investment in journalism. The following table shows the activity associated with investment (or reduction of investment) in news publications over the last year.

DATE	Activity	Affected Publication
May 2018	Stuff confirms shut down of 15 publications	South Canterbury Herald; Waitaki Herald; Selwyn and Ashburton Outlook; Invercargill Eye; Queenstown Mirror; NewsLink; Auto Xtra; Admire Nelson and Admire Marlborough; NZ Farmer; NZ Dairy Farmer; Waikato Farmer; Central District Farmer; Canterbury Farmer; Otago Southland Farmer
April 2018	Stuff confirms shut down of 5 community papers	Wairarapa News The Tribune Waiheke Marketplace Rotorua Review Ruapehu Press
April 2018	Stuff ceased broadsheet publishing – all papers now in tabloid form	Christchurch Press Dominion Post Waikato Times Taranaki Daily News Manawatu Standard Marlborough Express Nelson Mail Timaru Herald Southland Times
April 2018	APA closed New Zealand Newswire (NZN) – news supplier to NZ major media companies	Newswire
March 2018	Stuff confirms shut down of 5 community papers	Christchurch Mail Napier Mail Hastings Mai, North Waikato News Discovery magazine
January 2018	Bauer announced closure of Auckland weekly magazine	Paperboy
November 17	Publication for homeless people by homeless people started	K Road Chronicle
September 2017	Stuff closed down 1 community paper	Auckland City Harbour News
July 2017	Mana production announced Māori lifestyle magazine production on hold indefinitely	Mana Magazine
March 2017	Fairfax reduced publication to 3 days per week - 1 community paper	Marlborough Express

In response, there has been a number of initiatives to increase on-line journalism in the regions including Crux.org.nz, a regional news website for Queenstown launched by the Southern Community Media Trust and The Nelson App, launched by Nelson's locally owned weekly newspaper, The Nelson Weekly. We haven't attempted to detail the online changes in news and journalism due to the difficulty in quantifying and qualifying the scope.

Appendix 3 – PWC Report